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No. 84-233

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

PHILLIPS PETROLEUM COMPANY,
v. *Petitioner,*

IRL SHUTTS and ROBERT ANDERSON and BETTY ANDERSON, Individually and as representatives of all producers and royalty owners to whom Phillips Petroleum Company made payment of suspended proceeds of royalties pursuant to Federal Power Commission Opinion Nos. 699, 699H, 749, 749C, 770 and 770A,
Respondents.

On Writ of Certiorari to the
Supreme Court of the State of Kansas

JOINT APPENDIX

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**RELEVANT DOCKET ENTRIES IN
THE COURTS BELOW**

Excerpts from Appearance Docket
In The District Court of Seward County, Kansas

No. 79 C 113

July 3, 1979—Petition filed

August 7, 1979—Answer, Pretrial Motion and Counter-
claim filed

August 15, 1980—Plaintiff's Motion to Certify Class filed

February 26, 1982—Plaintiff's Brief on Jurisdiction Over
Non-Resident Class Members filed

April 12, 1982—Defendant's Brief on Jurisdiction Over
Claims of Non-Resident with Affidavit No. 4 of C. J.
Roberts attached filed

June 3, 1982—Journal Entry on Class Certification and
Notice filed

June 21, 1982—Affidavit of Mailing of Notice of Class
Action Suit filed

September 15, 1982—Affidavit of Mailing of Notice of
Class Action Suit filed

December 7, 1982—Pretrial Order filed

May 20, 1983—Journal Entry of Judgment filed

May 31, 1983—Notice of Appeal filed

June 16, 1983—Notice of Cross-Appeal filed

Excerpts from Docket
In The Kansas Supreme Court

No. 83-55796-A

June 9, 1983—Docketing Statement filed

June 15, 1983—Motion to Transfer Case to Kansas Supreme Court filed

June 15, 1983—Docketing Statement, Civil, Cross-Appeal filed

June 24, 1983—Order Transferring Case to Kansas Supreme Court filed

August 9, 1983—Brief of Appellant filed

October 7, 1983—Brief of Appellees filed

October 18, 1983—Reply Brief of Appellants filed

November 7, 1983—Application of Sun Oil for Leave to File Amicus Brief granted

November 11, 1983—Amicus Brief of Sun Oil filed

March 24, 1984—Opinion of Kansas Supreme Court filed

April 13, 1984—Motion for Rehearing filed

April 19, 1984—Response to Motion for Rehearing filed

May 10, 1984—Reply to Response to Motion for Rehearing filed

May 11, 1984—Motion for Rehearing denied

Excerpt From Kansas Supreme Court

Case No. 82-54608-S

Phillips Petroleum Co. v. Keaton G. Duckworth
(Cert. denied — U.S. 103 S.Ct. 725 (1982))

June 15, 1982—Petition for Order of Mandamus filed

June 18, 1982—Motion to Dismiss Motion for Order of Mandamus filed

June 28, 1982—Order denying Petition for Order of Mandamus filed

IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

—
No. 79-C-113

IRL SHUTTS and ROBERT ANDERSON and BETTY ANDERSON, Individually and as representatives of all producers and royalty owners to whom Phillips Petroleum Company made payment of suspended proceeds of royalties pursuant to Federal Power Commission Opinion Nos. 699, 699H, 749, 749C, 770 and 770A,
Plaintiffs,

vs.

PHILLIPS PETROLEUM COMPANY,
Defendant.

(Civil Class Action under K.S.A. Chapter 60)

—
PETITION

COME NOW the plaintiffs and allege and show to the court:

1) Plaintiff Irl Shutts is a resident of Barber County, Kansas, and his post office address is Sun City, Kansas. Plaintiffs Robert Anderson and Betty Anderson are residents of Texas County, Oklahoma, and their post office address is Box 1113, Guymon, Oklahoma 73942. Defendant is a corporation doing business in Seward County, Kansas. Defendant is referred to as Phillips in this Petition and such designation is intended to include the defendant corporation and any predecessor corporations in making gas payments hereinafter mentioned.

2) Plaintiffs are Phillips' royalty owners and are members of a class composed of all producers and royalty owners to whom Phillips made payment of suspended proceeds or royalties pursuant to Federal Power Commission Opinions Nos. 699, 699H, 749, 749C, 770 and 770A and the class may be divided into subclasses as follows:

(A.) A subclass consisting of producers and royalty owners who received payment from Phillips on or about December, 1975, of gas price increases pursuant to FPC Opinions 699 and 699H theretofore "suspended" by Phillips. (See Exhibit "1" hereto attached and made a part hereof.)

(B.) A subclass consisting of producers and royalty owners who received payments from Phillips on or about September, 1977, and March, 1978, of gas price increases pursuant to FPC Opinions Nos. 770 and 770A theretofore "suspended" by Phillips. (See Exhibits "2" and "3" hereto attached and made a part hereof.)

(C.) A subclass consisting of producers and royalty owners who received payment from Phillips in about September, 1978, of gas price increases pursuant to FPC Opinions Nos. 749 and 749C theretofore "suspended" by Phillips. (See Exhibits "4", "5" and "6" hereto attached and made a part hereof.)

3) Plaintiffs bring this action individually and as representatives of all of that class of producers and royalty owners referred to in Paragraph 2 above. Plaintiffs are informed and believe that the class which they seek to represent is composed of over 10,000 members, whose names and addresses are known to Phillips, but not to plaintiffs, and their number makes it impracticable to

join all of them in this action. Plaintiffs are informed and believe that formerly Phillips paid the plaintiffs and other class members all of their proportionate share of the proceeds of gas produced and sold; that beginning several years ago, and just when plaintiffs do not know, Phillips began receiving higher prices for the gas sold, but continued paying the class members at the old price. Plaintiffs are informed that Phillips commingled such so-called "suspended" money with its own money and invested and used the same for its own purposes. Phillips has not paid the plaintiff class or subclasses or anyone else for the use of such "suspended" monies held by Phillips during these periods of time. The Federal Power Commission issued its Opinion No. 699 on June 21, 1974, No. 699H on December 4, 1974, No. 749 on December 2, 1975, No. 749C on July 19, 1976, No. 770 on July 27, 1976, and No. 770A on November 5, 1976, which approved price escalations in rates for gas paid to Phillips but Phillips did not pay out to the class members until dates as above stated in Paragraph 2, the last date being September, 1978. The total amount of class members' money so held and finally paid over to the class members is not known to plaintiffs, but is known to defendant and is estimated by plaintiffs to be over \$1,000,000.00.

4) The plaintiffs and other members of the class are entitled to recover from Phillips for its use of the money on any one or more of the following theories or for the following reasons:

(A.) The doctrine of unjust enrichment. (*Shutts v. Phillips Petroleum Company*, 222 Kan. 527, 567 P.2d 1292, Syl. 19; U.S. Cert. denied 434 U.S. 1068, rehearing denied 435 U.S. 961.)

(B.) The equitable principle that when one makes actual use of money belonging to another, it is re-

quired to pay interest on the money so retained and used. (*Shutts, supra*, Syl. 20.)

(C.) Equitable principles require that class members receive the same treatment as gas purchasers as to interest required by the Federal Power Commission on "FPC suspense monies". (*Shutts, supra*, Syl. 21.)

(D.) Phillips made an *express* agreement by filing corporate undertaking with the Federal Power Commission to pay interest on the "suspended" proceeds. (*Shutts, supra*, P. 564.)

5) The question of law and fact involved in this action is common to all members of the class and subclasses identified above and is as follows:

"Should Phillips pay interest to class members on such 'suspended' monies at the rate of 7% per annum to October 10, 1974, and at the rate of 9% per annum thereafter until paid over to class members, all in accordance with FPC Order No. 513-A, issued July 14, 1976?"

6) The claim of these plaintiffs is typical of all claims of the general class identified above and of all three subclasses and plaintiffs can and will fairly and adequately protect the interests of such class and subclasses and all members of the class and subclasses.

7) Prosecution of separate actions by individual members of the class and subclasses identified above would result in multiple lawsuits; would create a risk of inconsistent or varying adjudications concerning individual members of the class and subclasses and could establish incompatible standards of conduct for defendant.

8) The amount of interest due these plaintiffs from defendant is probably less than \$1,000.00 each and it is

believed and so alleged by the plaintiffs that many of the members of the class and subclasses identified above have small amounts at stake. As a practical matter, many members of the class and subclasses would have no remedy if this action could not proceed as a class action.

9) Phillips has systematically and purposely withheld the money due the plaintiffs and other members of the class and subclasses and has used the money for its own purposes. Such action by Phillips without compensation to the class members for the use of the money has affected all members of the class in exactly the same way, except as to the amount due each, which can be easily computed through Phillips' records and computers. A class action is the only suitable means of redress to the plaintiffs and other class members.

10) The essential question at issue is the matter of collection of interest on money used by Phillips for several years and there is a community of interest among all members of the class and subclasses in this question and in the remedy. There is a "common fund" set up as to each of the subclasses subject to recovery in this action. The members of the class and subclasses are made up of residents and nonresidents of the State of Kansas, the above FPC opinions being nationwide gas pricing regulations. Class members are those affected by the national rates as set up by the FPC opinions above mentioned as distinguished from rates previously set up by FPC which affected only the individual rate making areas as defined by FPC, such as the Hugoton-Anadarko area.

WHEREFORE, plaintiff prays for an order of the court finding that this action is maintainable as a class action; for judgment in favor of plaintiff and other

members of the class for interest, costs of this action, attorneys' fees and expenses, and for all other proper relief.

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By /s/ [Illegible]
Attorneys for Plaintiffs

(Attachments omitted in printing)

IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

[Caption omitted in printing]

ANSWER, PRETRIAL MOTION AND COUNTERCLAIM

I.

ANSWER

COMES NOW the defendant Phillips Petroleum Company (Phillips) and for its answer to the plaintiffs' Petition alleges and states:

1. Phillips admits the allegations of paragraph 1 of the Petition.

2. Phillips denies the allegations of paragraphs 2 through 10 of the Petition except it is admitted that certain funds were disbursed by Phillips in accordance with Federal Power Commission Opinions Nos. 699, 699H, 749, 749C, 770 and 770A.

3. The Court is without jurisdiction of this purported nationwide class action. There is not a sufficient nexus between the State of Kansas and the claims alleged in the plaintiffs' Petition to confer jurisdiction upon the courts of the State of Kansas. Any such attempted exercise of jurisdiction by the courts of the State of Kansas would violate the laws of the State of Kansas, the Constitution of the State of Kansas, the Constitution of the United States of America and the Constitutions and Laws of the various states of the Union whose citizens and residents may have or claim some interest in the proceeding.

4. This action is not an appropriate class action, even if the Court had jurisdiction over said action, for the following reasons:

A. The claims of the named plaintiffs are not typical of the claims of the alleged class in that different legal relationships exist between the defendant and each of the purported class members. Phillips alleges that it has separate and distinct contractual relationships with each purported member of the alleged nationwide class and that each such member's rights and obligations are, and must be, initially determined in the context of its contractual relationship with the defendant. Since the contractual relationships vary widely in form and content, the claim of any particular purported class member is not typical with the claims of all other purported class members.

B. There is no common question of law that is common to all the members of the class. Each class member's right to relief is dependent not only upon his own particular fact situation but also upon the law of the jurisdiction wherein the said class member's alleged cause of action arose. The law in the various states, with respect to the obligations of Phillips and the purported class members, varies considerably from state to state and therefore no common question of law exists.

C. There is no common question of fact which is common to all of the class members. As hereinbefore alleged each class member's claim is dependent upon his particular contractual relationship with Phillips and his right to relief is dependent upon that particular fact situation together with the particular law of the state in which such claim arose.

D. The named plaintiffs are not adequate representatives of the class which they purport to represent. As hereinbefore alleged, significant factual

and legal differences with respect to each plaintiff are present and it may be in the interest of some class members to proceed on theories of recovery which would be inimical to the interests of the named class plaintiffs. Furthermore, the named class plaintiffs purport to represent a class not only of royalty owners but also of producers of natural gas although they themselves are not producers of natural gas and occupy a significantly different legal relationship to Phillips than do the producers. In many instances the producers themselves have relieved Phillips of any possible claim by the royalty owners and therefore claims and counterclaims may exist between the royalty owners on the one hand and the producers on the other hand. Because of such inherent conflicts between the positions of the two groups it is not ethically or legally possible for the named plaintiffs to represent a group composed of both competing interests.

5. Some or all of the claims of the plaintiffs and the purported class members are barred because of the contractual relationship existing between Phillips and the particular plaintiff or purported class member. For example, certain purported class members have specifically contracted with Phillips to allow Phillips to retain, without interest, any additional money associated with Federal Power Commission (FPC) action regarding proposed gas price rate increases. Other purported class members, and again by contracts with Phillips, have specifically released Phillips from any liability for interest on the additional money paid by Phillips after final FPC action on the several pending gas price rate increase requests.

6. The additional monies paid out by Phillips pursuant to the three FPC Opinions (Nos. 669, 770 and 749) related to the full time period covered by said Opinions. However, Phillips did not receive the monies

collected subject to refund pursuant to said Opinions until after the effective dates of the Opinions. Phillips denies that it either had possession of, or used, any of the so-called "suspense monies", on which the plaintiffs and purported class members claim interest is due, at any time prior to the actual receipts of the various monies collected subject to refund by Phillips.

7. Phillips offered to pay to the plaintiffs and to the members of the purported class an amount equal to the sums collected by Phillips subject to refund, as the same were received, on the condition that the recipient of the monies would agree to refund to Phillips such amounts as were ultimately determined by the Federal Power Commission (FPC) to have been paid in excess of the just and reasonable rate. Substantial numbers of producers and royalty owners accepted this offer and thereafter currently received the additional money. Phillips' offers to make such payments have been judicially held to bar a subsequent claim for interest on the funds held by Phillips from and after the date of the offer and without regard to whether or not the offer was subsequently accepted. This rule should be applicable, under the facts in this case, to all plaintiffs and purported class members. Accordingly, the interest claims of the plaintiffs and the purported class members are barred as a matter of law and/or on equitable grounds.

8. Following Phillips' offers to pay the money collected subject to possible refund to the plaintiffs and purported class members, some specifically directed Phillips not to pay them said money until such time as all FPC action was final. The interest claims of all those who did are barred.

9. Some or all of the claims asserted by plaintiffs and the purported class members are either barred or are not recognizable under the laws of the various jurisdictions wherein the alleged causes of action arose. It is alleged that the merits of the interest claim of each

purported class member must be determined in accordance with the law of the state in which the alleged cause of action arose.

10. Some or all of the claims asserted by the plaintiffs and purported class members are barred by the appropriate statutes of limitation and/or by the doctrine of laches, and/or by the doctrine of res judicata.

11. Some or all of the claims asserted by the plaintiffs and purported class members are barred by the defenses of Accord and Satisfaction, and/or Compromise and Settlement, and/or Estoppel, and/or Payment, and/or Release, and/or Waiver.

12. Phillips denies that it is liable for interest in any amount to any person or entity but alleges, in the alternative, that if such interest is awarded by the Court then the rate of such interest should be determined by the laws of the various states wherein the particular cause of action for said person or entity arose, and such interest should be computed on only those amounts of money actually received by Phillips, and only from and after the actual dates of the receipt of said money by Phillips.

WHEREFORE, having fully answered, the defendant Phillips Petroleum Company prays that this action be dismissed and that defendant have judgment herein for its costs.

II.

PRETRIAL MOTION

Pursuant to K.S.A. 60-212(d), Phillips moves the Court to hear and determine before the trial of the principal case, and prior to action by the plaintiffs for class certification, the defense contained in paragraph 3 of the foregoing Answer for the reason that if said defense is decided in the favor of Phillips, this action should be dismissed in whole or in part.

III.

COUNTERCLAIM

COMES NOW Phillips Petroleum Company (Phillips) and for its counterclaim against the plaintiffs and the purported class members herein alleges and states:

1. At all times relevant to this action, Phillips was a producer of natural gas subject to the provisions of the Natural Gas Act and the Federal Power Commission (now the Federal Energy Regulatory Commission). Phillips not only produced gas from leases in which it was the lessee but also purchased natural gas in the ordinary course of its business and made royalty distribution pursuant to a wide variety of contractual arrangements.

2. To the extent that Phillips has overpaid any monies to plaintiffs or any members of the purported plaintiff class in this action then Phillips claims a right to set off such amounts of overpayment against any sums found to be due from Phillips to said class.

3. To the extent Phillips performed royalty accounting functions and made the royalty disbursements on behalf of other natural gas producers, at their direction, or lack thereof, Phillips is entitled to be indemnified by such producers for any loss or liability which Phillips sustains herein.

4. As a setoff, Phillips is entitled to recover from the plaintiffs and all members of the purported plaintiff class herein for their proportionate share of administrative costs and expenses incurred by Phillips on behalf of said persons or entities in obtaining higher prices for gas over the years. This would include the right to recover those administrative costs, expenses and attorneys fees not only in proceedings culminated in FPC Opinions Nos. 699, 699H, 749, 749C, 770 and 770A but also all other Federal Power Commission or Federal Energy Regula-

tory Commission proceedings from June 1, 1954 to the present time.

5. In the event, and only in the event, that the Court determines that Phillips is liable for interest, Phillips is entitled to recover, from all producers within the purported plaintiff class, interest on any and all additional money paid by them to Phillips pursuant to FPC Opinions Nos. 586, 699, 699H, 749, 749C, 770 and 770A.

6. Phillips specifically reserves the right, in the event, and only in the event, that this case is certified as a class action, and after the membership of the class is made up, to plead further and more specific counterclaims against any and all class members who elect to be bound by the decision in this case. Until such time as the class is established Phillips cannot be more definitive about what such counterclaim will be, or against what persons or entities they will be plead.

WHEREFORE, having fully answered, Phillips prays for judgment in accordance with the foregoing allegations, for all costs, for attorney fees and expenses, for prejudgment interest, and for all other proper relief at law or in equity.

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 Phillips Petroleum Company

(Certificate of service omitted in printing)

IN THE DISTRICT COURT
 OF SEWARD COUNTY, KANSAS

(Caption omitted in printing)

**JOURNAL ENTRY ON
 CLASS CERTIFICATION AND NOTICE**

NOW, on this 21st day of May, 1982, this matter comes on for hearing on plaintiffs' motion to certify as a class action and determine notice, and defendant's motion to dismiss as to all members of the class not residents of Kansas. The following appearances are made:

Attorneys for Plaintiffs:

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Thereupon, the motions are presented and argued to the Court after the matters had been briefed by counsel. The Court, having read the briefs and heard argument of counsel, and based upon the files and records in this matter and the evidence presented, finds, AND IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The proposed class of parties plaintiff is extremely numerous and exceeds some 33,000 members and an actual joinder of all members is totally impracticable.

2. The claims of plaintiffs are typical of the claims of all the members of the class except that each owner may

be entitled to a different amount of interest and the interest to each owner, if allowed, would be too small to enable each to file a separate action.

3. The only questions of law and fact in this case are common to the entire proposed class, in that the sole issue appears to be whether defendant is liable for interest on the money received by it from purchasers of gas pursuant to opinions No. 699, 749 and 770 of the Federal Power Commission and withheld by defendant for a period from December 30, 1975, to July 1, 1980.

4. This action should be certified as a class action and the plaintiff class is defined as follows:

"All royalty owners and overriding royalty owners to whom Phillips Petroleum Company made suspense royalty payments between December 30, 1975, and July 1, 1980, relating to Federal Powers Commission Opinions 699, 749 and 770 (which includes 699H, 749C and 770A)."

5. Notice of the pendency of this action, its nature and effects of any judgment shall be given to all members of the class. The form of such notice, which is approved by the Court, is attached hereto and made a part thereof. The defendant shall provide to the plaintiffs a list of all members of the class and their mailing addresses as shown by defendant's records. The defendant shall provide to plaintiffs pressure sensitive mailing labels for each member of the class which shall contain thereon their individual name and address. The plaintiffs shall cause the notice to be mailed to all members of the class by first class mail and the plaintiffs shall bear all expense thereof. The envelopes shall contain the following return information:

RETURN TO:

SMITH, GREENLEAF & BROOKS
Box 1039
Liberal Kansas 67901

The notice is to be dated June 15, 1982, and request for exclusion must be filed by August 1, 1982.

6. If any of the notices sent to class members are returned by the postal service as non-deliverable, the plaintiffs will notify defendant of the names; and defendant is to further check its records and provide plaintiffs with all information it has pertaining to such class member, so that notice may be provided to such person and/or such persons, heirs, devisees or assigns.

7. The plaintiffs' request to certify as a class other than the class set out herein is overruled.

8. The defendant's motion to dismiss as to non-resident class members is overruled.

/s/ Keaton G. Duckworth
Judge

APPROVED AS TO FORM:

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By /s/ T. L. Cubbage II
One of the Attorneys
for Defendant

IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

(Caption omitted in printing)

NOTICE OF CLASS ACTION SUIT

TO: Royalty owners and overriding royalty owners to whom Phillips Petroleum Company made suspense royalty payments between December 30, 1975, and July 1, 1980, relating to Federal Power Commission Opinions No. 699, 749, and 770.

This notice is to inform you that you, as royalty owner or overriding royalty owner under an oil and gas lease in which Phillips Petroleum Company is an interest owner, are a member of the plaintiff class, in a court action against Phillips Petroleum Company.

The purpose of this Notice is to advise you of your rights and obligations in relation to this lawsuit.

This suit was filed in July, 1979, by the above named plaintiffs, individually and on behalf of all other royalty owners and overriding royalty owners to whom this notice is directed. Plaintiffs seek judgment against Defendant for the payment of interest on suspended royalty paid by Defendant between December 30, 1975, and July 1, 1980, attributable to increased gas sales prices approved by the Federal Power Commission in Opinions Nos. 699, 749, and 770. There are in excess of 30,000 gas royalty owners and overriding royalty owners who are members of the class.

Defendant Phillips has denied any liability to plaintiffs or members of the class described above.

The Court has made no rulings as to the merits of these claims or defenses, yet has held that this action is to be maintained as a class action. Accordingly:

1. By order of this court dated May 21, 1982, you have been found to be a member of the plaintiff class in this lawsuit.

2. As a class member, your interests are currently being represented by the three named plaintiffs and their attorneys of record listed below. Any class member, if he or she so desires, may appear in the case in person or through his or her own counsel.

3. You may elect to be excluded from the class, by sending the request for exclusion form which appears at the end of this notice to the Clerk of the Court addressed as follows:

Clerk of the Court
Seward County, Kansas
415 N. Washington
Liberal, Kansas 67901

This request must be mailed so as to be received on or before August 1, 1982. The Court has determined that all requests for exclusion received on or before that date will be granted without further hearing.

4. Judgment in this action, whether for the plaintiff class or the defendant, will be binding upon all class members except those who may be excluded as above stated. Class members excluded will not be entitled to share in the benefit of any judgment or settlement entered or concluded favorable to the plaintiff class, nor will excluded class members be held bound in this action if judgment is rendered for Phillips.

5. Plaintiffs' attorneys fees are contingent on recovery. If the plaintiffs are successful, the court will allow a reasonable attorneys' fee for plaintiffs' attorneys, not exceeding one-third of the interest fund created. This means that if a judgment in your favor is entered, the court may award up to one-third of it to be paid to the plaintiffs' attorneys to compensate them for representing

your interests. If you elect to intervene with your own attorneys, your share of the favorable judgment will not be reduced. If you request exclusion from the class, you will not be assessed any attorneys' fees. If plaintiffs are unsuccessful, there will be no allowance of attorneys' fees.

If you want further information, please do not call or write the Judge or the Clerk of the Court, but call or write one of the attorneys listed below.

DATED: June 15, 1982

KEATON G. DUCKWORTH
District Judge

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IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

Case No. 79-C-113

IRL SHUTTS and ROBERT ANDERSON and BETTY ANDERSON, Individually and as representatives of certain others,

Plaintiffs,

vs.

PHILLIPS PETROLEUM COMPANY,
Defendant.

REQUEST FOR EXCLUSION

To the Clerk of the Court:

The undersigned respectfully requests to be excluded from the plaintiff class members in this case in accordance with the terms of the Notice of Pendency of Class Action dated June 15, 1982.

DATED _____, 1982.

Send to:

Clerk of the Court
415 N. Washington
Liberal, Kansas 67901

Signature: _____

Print Name: _____

Address: _____

IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

(Caption omitted in printing)

AFFIDAVIT OF MAILING

STATE OF MISSOURI,

COUNTY OF JACKSON, SS:

Dan Hill, of lawful age and being first duly sworn, on oath states:

He is Vice President of Strahm Printing & Mailing Co., 415 West 10th Street, Kansas City, MO 64105; at the request of W. Luke Chapin, Ed Moore and Harold Greenleaf, attorneys for plaintiffs in the above entitled action, Strahm Printing & Mailing Co. printed Notices of Class Action Suit, of which the attached is a true copy, and printed envelopes with return address of Smith, Greenleaf & Brooks, Box 1039 Liberal Kansas, 67901, of which true copy is attached, and caused such notices to be mailed in the U.S. mail, postage prepaid, at Kansas City, Missouri, on or about June 18, 1982, to royalty owners and overriding royalty owners to whom Phillips Petroleum Company made suspense royalty payment between December 20, 1975, and July 1, 1980, relating to Federal Power Commission Opinion Nos. 699, 749, and 770, according to pressure sensitive labels which I am informed were furnished by Phillips Petroleum Company, to 33,241 such royalty owners within continental United States and 209 royalty owners outside continental United States; and I am further informed that a list of such persons, firms, corporations and entities to whom such notices were mailed will be furnished to the Clerk of the District Court of Seward County, Kansas.

Affiant further states that the total costs of such printing and mailing were \$9,429.70.

/s/ Dan Hill
DAN HILL

(Jurat and attachment omitted in printing)

IN THE DISTRICT COURT
OF SEWARD COUNTY, KANSAS

(Caption omitted in printing)

AFFIDAVIT OF MAILING

STATE OF KANSAS,

COUNTY OF BARBER, SS:

W. Luke Chapin, of lawful age and being first duly sworn, upon oath states:

He is one of the attorneys for plaintiff class in the above entitled action; that heretofore Strahm Printing & Mailing Company, Kansas City, Missouri, printed and mailed approximately 33,000 notices of class action suit dated June 15, 1982; that more than 2,000 envelopes were returned from such first mailing; that such returned envelopes were sent to Phillips Petroleum Company, Bartlesville, Oklahoma; that Phillips Petroleum Company thereafter provided its mailing list No. 2, containing names and addresses, social security numbers if available, status code concerning the returned mailings and amounts of suspense monies paid to the persons to whom mailed, copy of such list being hereto attached, containing 2,058 undelivered notices; that thereafter and as of August 20, 1982, the court ordered that plaintiffs attempt to obtain better addresses for plaintiff class members to whom letters previously addressed have been returned, particularly those having been paid suspense royalties of \$100.00 or more, making use of telephone calls to the extent feasible; that the office of Ed Moore, one of the attorneys for plaintiff class, through telephone calls was able to come up with better addresses for certain of those 2,058 undelivered notices, copy of

Ed Moore's revised list being attached; that notices were mailed to such revised list of names and addresses by me on September 13, 1982, copy of the revised notice being in accordance with the court's order of August 20, 1982, and being hereto attached and made a part hereof; that Phillips Petroleum Company also sent further return envelope information by its letter of August 23, 1982, and I mailed copy of notices to six persons whose names are checked in red on the attached Phillips list No. 3, such notices being mailed on August 25, 1982; that Phillips further sent list No. 4, hereto attached, containing names of decedents and updated names of heirs, devisees and legatees and representatives; and that I mailed copy of notice attached to all of such persons on September 13, 1982; that Harold Greenleaf compiled a list of former royalty owners and current royalty owners from correspondence he received from persons addressed in the first notice given, copy of such list being attached, and I mailed new notice to the current royalty owners shown on such list on September 14, 1982; that all of such notices were mailed by first class mail at Medicine Lodge, Kansas; that the total number of additional notices mailed allowing October 15 as opt out date were 366; that total cost of preparing and mailing such notices was \$183.00.

/s/ W. Luke Chapin
W. LUKE CHAPIN

(Jurat and attachment omitted in printing)

**REFERENCE TO PARTS OF THE RECORD
REPRODUCED IN PETITION
FOR WRIT OF CERTIORARI**

The Order of the Supreme Court of Kansas filed May 11, 1984, denying rehearing is set forth at page A1 of the Petition for Writ of Certiorari.

The opinion of the Kansas Supreme Court of Kansas filed March 24, 1984, is set forth commencing at page A2 of the Petition for Writ of Certiorari.

The Journal Entry of Judgment of the District Court of Seward County, Kansas filed May 20, 1983, is set forth commencing at page A48 of the Petition for Writ of Certiorari.

Affidavit No. 4 (C. A. Roberts) of the District Court of Seward County, Kansas filed April 12, 1982, is set forth commencing at page A60 of the Petition for Writ of Certiorari.